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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,847	03/12/2001	Gerd Mansfeld	Mo-6209/HR-183	1134

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BAYER POLYMERS LLC
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

JOHNSON, EDWARD M

ART UNIT

PAPER NUMBER

1754

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

mn-7

Office Action Summary

Application No.

09/762,847

Applicant(s)

MANSFELD ET AL.

Examiner

Edward M. Johnson

Art Unit

1754

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☒ Claim(s) 1-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

~~Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.83(a).~~

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The abstract and disclosure are objected to because they use the British "sulphur". Examiner suggests --sulfur--. Correction is required. See MPEP § 608.01(b).

Claim Objections

2. Claims 1-7 are objected to because of the following informalities: claims 1-7 begin with "Method". Examiner suggests --A method--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 5, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, "said at least two different... esters" lacks antecedent basis.

Claims 5 and 14 provide for the use of an N compound, but, since the claims do not set forth any steps involved in the method/process of use, it is unclear what method/process of use

applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Examiner suggests deletion of "used as" in claim 5 and replacing, in claim 14, "used" with --present--.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 5 and 14 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966). Examiner suggests deletion of "used as" in claim 5 and replacing, in claim 14, "used" with --present--.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5-7, 9-10, and 13-15 rejected under 35

U.S.C. 102(b) as being anticipated by Yoshida et al. US

4,487,613.

Regarding claim 1, Yoshida '613 discloses a method for odorization of hydrocarbon gases comprising combination of 2-methoxy-3-isobutyl pyrazine and methyl acrylate (see columns 5 and 6, Formulas).

Regarding claim 9, Yoshida '613 discloses a composition for odorization of hydrocarbon gases comprising combination of 2-methoxy-3-isobutyl pyrazine and methyl acrylate (see columns 5 and 6, Formulas).

~~Regarding claims 5 and 13, Yoshida discloses addition of 2-~~
methyl-3-isobutyl pyrazine (see column 6, lines 56-61).

Regarding claims 6-7 and 14-15, 0.5 parts pyrazine to 100 parts methyl acrylate (see columns 5-6, Formulas).

9. Claims 1-5 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mookherjee et al. US 5,321,005.

Regarding claim 1, Mookherjee '005 discloses a process for producing an air fragrance composition comprising combining living pineapple (abstract) and adjuvant, such as 2-methyl pyrazine (see column 9, lines 49-51).

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Regarding claim 9, Mookherjee '005 discloses an air fragrance composition comprising combining living pineapple (abstract) and adjuvant, such as 2-methyl pyrazine (see column 9, lines 49-51).

Regarding claims 2-3 and 10-11, Mookherjee '005 discloses combining the interior and exterior of a pineapple (abstract), wherein the exterior comprises ethyl acetate and methyl butyrate, and the interior comprises methyl acetate (see column 16, lines 6 and 9).

Regarding claims 4 and 12, Mookherjee '005 discloses 1.17% ethyl acetate and 0.73% methyl butyrate (see column 16, lines 9 and 12).

Regarding claims 5 and 13, Mookherjee '005 discloses 2-methyl pyrazine (see column 9, lines 49-51).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 2-3 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida '613.

Regarding claims 2-3 and 10-11, Yoshida fails to specifically disclose 2 different acrylic esters.

It is considered that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ethyl acrylate in combination with the methyl acrylate of Yoshida because Yoshida discloses combinations of ethyl acrylate useful for odorization (see column 1, lines 14-16 and 64-68; column 2, lines 1-6).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grossman US

3,620,982 discloses a perfume composition comprising Ionol as antioxidant (see Example 1); Ott et al. US 6,296,889 discloses a perfume composition (abstract) comprising acrylic and pyrazine (see Table 5).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward M. Johnson whose telephone number is 703-305-0216. The examiner can normally be reached on M-F 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman


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can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

EMJ

April 30, 2003


STANLEY S. SILVERMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700
